

confirmation hearings. As a result, it is difficult for the Senate and the American public to understand how these nominees will approach their role on the Court.

This trend was obvious in the confirmation hearings of Chief Justice John Roberts and Associate Justice Samuel Alito. Throughout their hearings, they offered only general platitudes, with little indication of how they would rule on the bench. They refused to answer specific questions or to say how they would have voted in past cases, on the ground that doing so might compromise their duty to decide every case with an open mind.

Legal scholars are increasingly in agreement that political convenience, not principle, has motivated much of this stonewalling. Since Supreme Court nominees all have years of legal experience and, if confirmed, have lifetime appointments to the Court, they can be candid about their views on many issues, including previously decided cases, without doing any damage to the judicial system or to the rights of future litigants.

Since Supreme Court confirmation hearings have become increasingly lacking in significant content, it is no surprise that researchers find weak correlations between what nominees say at the hearings and what they do on the Court, and that academic and popular support for a more serious confirmation process continues to grow. Of course, no Senator should try to undermine judicial independence by asking nominees to make "commitments" to rule a particular way in a future case, but all Senators should insist that nominees participate in a serious conversation about the pressing legal issues of our time. Hopefully, Senators on both sides of the aisle can agree that, at a minimum, nominees should give full and forthright responses when asked about their views on specific legal questions. It does not compromise the integrity or impartiality of the judiciary to require nominees to tell the Senate what they honestly think about such questions. Their failure to do so has real costs for our democracy.

Madam President, I believe that this article will be of interest to all of us in the Senate in exercising our constitutional responsibility of advice and consent on judicial nominees, especially nominees to the Supreme Court, and I ask unanimous consent that the New York Times editorial and the article's abstract be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 14, 2008]

HOW TO JUDGE A WOULD-BE JUSTICE

It is hard to imagine a more solemn responsibility than confirming the nomination of a Supreme Court justice. And we have worried, especially in recent years, that nominees are far too carefully packaged and coached on how to duck all of the hard questions.

A new study supports our fears: Supreme Court nominees present themselves one way

at confirmation hearings but act differently on the court. That makes it difficult for senators to cast informed votes or for the public to play a meaningful role in the process.

The study—with the unwieldy title "An Empirical Analysis of the Confirmation Hearings of the Justices of the Rehnquist Natural Court"—published in Constitutional Commentary, looked at how nine long-serving justices answered Senate questions, and how they then voted on the court. While it does not say that any nominee was intentionally misleading, it still found a wide gap.

Justices Antonin Scalia and Clarence Thomas, for example, told the Senate that they had strong respect for Supreme Court precedents. On the court they were the justices most likely to vote to overturn those precedents. Justice David Souter deferred more to precedent than his Senate testimony suggested he would.

The authors examined one substantive area of the law: criminal defendants' rights. There what the nominees—both conservatives and liberals—told the Senate about their support for defendants' rights was reasonably well reflected in how they voted.

The study suggests that senators would be better off asking "very probing, specific questions," says Lori Ringhand, associate professor of law at the University of Kentucky and one of the paper's three authors.

As we see it, the study also delivers a larger lesson: Senators should examine a nominee's entire legal career and look for clear evidence that he or she is committed to fairness, equal justice and an unstinting view of constitutional rights.

The findings have particular resonance now because the next president could nominate three or more justices, shaping the law for decades to come. The Senate needs to upgrade the confirmation process so it can perform its vital advice-and-consent role more effectively.

[From Social Science Research Network]

AN EMPIRICAL ANALYSIS OF THE CONFIRMATION HEARINGS OF THE JUSTICES OF THE REHNQUIST NATURAL COURT

(By Jason J. Czarnecki, Marquette University; William K. Ford, John Marshall Law School; and Lori A. Ringhand, University of Kentucky)

Despite the high degree of interest generated by Supreme Court confirmation hearings, surprisingly little work has been done comparing the statements made by nominees at their confirmation hearings with their voting behavior once on the Supreme Court. This paper begins to explore this potentially rich area by examining confirmation statements made by nominees regarding three different methods of constitutional interpretation: stare decisis, originalism and the use of legislative history. We also look at nominees' statements about one specific area of law: protection of the rights of criminal defendants. We then compare the nominees' statements to decisions made by the Justices once confirmed. Our results indicate that confirmation hearings statements about a nominee's preferred interpretive methodologies provide very little information about future judicial behavior. Inquiries into specific issue areas—such as the rights of criminal defendants—may be slightly more informative. We emphasize, however, that this study is a preliminary look at this issue. As such, we hope this piece stimulates discussion regarding how to best use the wealth of information provided by confirmation hearings to facilitate a better understanding of the role those hearings do—or could—play in shaping the jurisprudence of the Supreme Court.

TRIBUTE TO MICHAEL A. HANNA

Mr. SPECTER. Madam President, I have sought recognition today to speak about Michael A. Hanna, who passed away on April 2, 2008.

Mr. Hanna was born July 1, 1952, in Oakland, MD to former county Democratic chairman and district attorney Michael A. Hanna and Eliza Jane Gibson Hanna of Monongahela. He spent time working on Capitol Hill and had the distinction of serving as the youngest U.S. House of Representatives page in the history of the program. He also served as a personal assistant to former Speaker of the House John W. McCormick.

An author and producer, Mr. Hanna graduated from Washington & Jefferson College and attended Duquesne Law School. Although perhaps best known for the animated series "Rockin' at the Rim" and authoring the book "Cuba: Fire Island," his professional experience extended a good deal further. He served as a special envoy to the country of Haiti and traveled extensively in various professional capacities throughout Europe and the Middle East.

Mr. Hanna is survived by his mother and brother, Mark Hanna, as well as Mark's wife Ashley and their son Michael. On their behalf, I would like to recognize and honor Michael A. Hanna's life and work.

HEALTH CARE

Mr. WYDEN. Madam President, Dr. Ezekiel Emanuel and Dr. Victor Fuchs, physicians and distinguished scholars, have recently written a particularly important article that I wish to bring to the attention of the Senate.

These two gentlemen have a long and impressive track record on the issue of reforming our Nation's broken health system, and their recent article in the Journal of American Medicine (JAMA), "Who Really Pays for Health Care? The Myth of Shared Responsibility," is one that every Senator should reflect on.

Drs. Emanuel and Fuchs assert in their article that when millions of Americans say that financing health care is a "shared responsibility" between "employers, government, and individuals" they are incorrect. The authors say there is actually no such thing as "shared responsibility"—health costs in America come out of the hides of individuals and households. Emanuel-Fuchs point out, for example, that money employers spend on health care for their workers would otherwise go to workers' salaries and that Government cannot secure funds at all without reaching into our wallets for tax payments or money we lend to them.

The work of these two scholars is particularly relevant because recent public opinion polls show significant numbers of Americans would be content "to just keep the health care they have." This seems understandable. If

you are not a regular reader of JAMA, you are likely to miss Dr. Emanuel and Dr. Fuchs describe how your take-home pay is going to keep going down without health reform that makes health care more affordable.

If Americans are kept in the dark about how much of the money spent on employer-based health care produces little value, naturally, during these times of economic uncertainty, many will be glad to just keep the care they have got.

Senator BENNETT and I, along with six other Democrats and six other Republicans, believe it is time to modernize the employer-employee relationship in health care. If employers choose to offer health coverage in the future, and workers know how much money they are spending and can choose between the employer's health coverage and private sector alternatives, we are fine with that. Workers should, however, have the opportunity as Dr. Emanuel and Dr. Fuchs put it to "consider alternatives". Americans can get more value from the 2.3 trillion dollars being spent this year on their health care, and this article is an important part of the discussion as to how to bring that about.

Mr. President, I ask unanimous consent that the article by Drs. Emanuel and Fuchs be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WHO REALLY PAYS FOR HEALTH CARE?

THE MYTH OF "SHARED RESPONSIBILITY"

(By Ezekiel J. Emanuel, M.D., Ph.D. and Victor R. Fuchs, Ph.D.)

When asked who pays for health care in the United States, the usual answer is "employers, government, and individuals." Most Americans believe that employers pay the bulk of workers' premiums and that governments pay for Medicare, Medicaid, the State Children's Health Insurance Program (CHIP), and other programs.

However, this is incorrect. Employers do not bear the cost of employment-based insurance; workers and households pay for health insurance through lower wages and higher prices. Moreover, government has no source of funds other than taxes or borrowing to pay for health care.

Failure to understand that individuals and households actually foot the entire health care bill perpetuates the idea that people can get great health benefits paid for by someone else. It leads to perverse and counterproductive ideas regarding health care reform.

THE MYTH OF SHARED RESPONSIBILITY

Many sources contribute to the misperception that employers and government bear significant shares of health care costs. For example, a report of the Centers for Medicare & Medicaid Services states that "the financial burden of health care costs resides with businesses, households, and governments that pay insurance premiums, out-of-pocket costs, or finance health care through dedicated taxes or general revenues." A New America Foundation report claims, "There is growing bipartisan support for a health system based on shared responsibility—with the individual, employers, and government all doing their fair share."

The notion of shared responsibility serves many interests. "Responsibility" is a pop-

ular catchword for those who believe everyone should pull their own weight, while "sharing" appeals to those who believe everyone should contribute to meeting common social goals. Politicians welcome the opportunity to boast that they are "giving" the people health benefits. Employers and union leaders alike want workers to believe that the employer is "giving" them health insurance. For example, Steve Burd, president and chief executive officer of Safeway, argued that decreasing health care costs is critical to his company's bottom line—as if costs come out of profits. A highly touted alliance between Wal-Mart and the Service Employees International Union for universal coverage pledged that "businesses, governments, and individuals all [must] contribute to managing and financing a new American health care system."

The Massachusetts health care reform plan is constructed around "shared responsibility." The rhetoric of health reform proposals offered by several presidential candidates helps propagate this idea. Hillary Clinton, for instance, claims that her American Health Choices plan "is based on the principle of shared responsibility. This plan ensures that all who benefit from the system contribute to its financing and management." It then lists how insurance and drug companies, individuals, clinicians, employers, and government must each contribute to the provision of improved health care.

With prominent politicians, business leaders, and experts supporting shared responsibility, it is hardly surprising that most Americans believe that employers really bear most of the cost of health insurance.

THE HEALTH CARE COST-WAGE TRADE-OFF

Shared responsibility is a myth. While employers do provide health insurance for the majority of Americans, that does not mean that they are paying the cost. Wages, health insurance, and other fringe benefits are simply components of overall worker compensation. When employers provide health insurance to their workers, they may define the benefits, select the health plan to manage the benefits, and collect the funds to pay the health plan, but they do not bear the ultimate cost. Employers' contribution to the health insurance premium is really workers' compensation in another form.

This is not a point merely of economic theory but of historical fact. Consider changes in health insurance premiums, wages, and corporate profits over the past 30 years. Premiums have increased by about 300% after adjustment for inflation. Corporate profits per employee have flourished, with inflation-adjusted increases of 150% before taxes and 200% after taxes. By contrast, average hourly earnings of workers in private non-agricultural industries have been stagnant, actually decreasing by 4% after adjustment for inflation. Rather than coming out of corporate profits, the increasing cost of health care has resulted in relatively flat real wages for 30 years. That is the health care cost-wage trade-off.

Even over shorter periods, workers' average hourly earnings fluctuate with changes in health care expenditures (adjusted for inflation). During periods when the real annual increases in health care costs are significant, as between 1987 and 1992 and again between 2001 and 2004, inflation-adjusted hourly earnings are flat or even declining in real value. For a variety of reasons, the decline in wages may lag a few years behind health care cost increases. Insurance premiums increase after costs increase. Employers may be in binding multiyear wage contracts that restrict their ability to change wages immediately. Conversely, when increases in health care costs are moderate, as between 1994 and 1999, in-

creases in productivity and other factors translate into higher wages rather than health care premiums.

The health care cost-wage trade-off is confirmed by many economic studies. State mandates for inclusion of certain health benefits in insurance packages resulted in essentially all the cost of the added services being borne by workers in terms of lower wages. Similarly, using the Consumer Expenditure Survey, Miller found that "the amount of earnings a worker must give up for gaining health insurance is roughly equal to the amount an employer must pay for such coverage." Baicker and Chandra reported that a 10% increase in state health insurance premiums generated a 2.3% decline in wages, "so that [workers] bear the full cost of the premium increase." Importantly, several studies show that when workers lose employer-provided health insurance, they actually receive pay increases equivalent to the insurance premium.

In a review of studies on the link between higher health care costs and wages, Gruber concluded, "The results [of studies] that attempt to control for worker selection, firm selection, or (ideally) both have produced a fairly uniform result: the costs of health insurance are fully shifted to wages."

THE COST—PUBLIC SERVICE TRADE-OFF

A large portion of health care coverage in the United States is provided by the government. But where does government's money for health care come from? Just as the ultimate cost of employer-provided health insurance falls to workers, the burden of government-provided health coverage falls on the average citizen. When government pays for increases in health care costs, it taxes current citizens, borrows from future taxpayers, or reduces other state services that benefit citizens: the health care cost—public service trade-off.

Health care costs are now the single largest part of state budgets, exceeding education. According to the National Governors Association, in 2006, health care expenditures accounted for an average of 32 percent of state budgets, while Medicaid alone accounted for 22 of spending. Between 2000 and 2004, health care expenditures increased substantially, more than 34 percent with Medicaid and SCHIP increasing more than 44 percent. These increases far exceeded the increase in state tax receipts. In response, some states raised taxes, others changed eligibility requirements for Medicaid and other programs, and still others reduced the fees and payments to physicians, hospitals, and other providers of health care services.

However, according to a Rockefeller Institute of Government study of how 10 representative states responded, probably the most common policy change was to cut other state programs, and "the program area that was most affected by state budget difficulties in 2004 was public higher education. . . . On average, the sample states projected spending 4.5 percent less on higher education in FY 2004 than in FY 2003 and raised tuition and fees by almost 14 percent on average. In other words, the increasing cost of Medicaid and other government health care programs are a primary reason for the substantial increase in tuition and fees for state colleges and universities. Middle-class families finding it more difficult to pay for their children's college are unwittingly falling victim to increasing state health care costs. Not an easy—but a necessary—connection to make.

POLICY IMPLICATIONS

The widespread failure to acknowledge these effects of increasing health care costs on wages and on government services such as education has important policy implications. The myth of shared responsibility perpetuates the belief that workers are getting

something while paying little or nothing. This undercuts the public's willingness to tax itself for the benefits it wants.

This myth of shared responsibility makes any reform that removes employers from health care much more difficult to enact. If workers and their families continue to believe that they can get a substantial fringe benefit like health insurance at no cost to themselves, they are less likely to consider alternatives. Unless this myth is dispelled, the centerpiece of reform is likely to be an employer mandate. This is regrettable and perpetuates the widely recognized historical mistake of tying health care coverage to employment. Furthermore, an employer mandate is an economically inefficient mechanism to finance health care. Keeping employers in health care, with their varied interests and competencies, impedes major changes necessary for insurance portability, cost control, efficient insurance exchanges, value-based coverage, delivery system reform, and many other essential reforms. Employers should be removed from health care except for enacting wellness programs that directly help maintain productivity and reduce absenteeism. Politicians' rhetoric about shared responsibility reinforces rather than rejects this misconception and inhibits rather than facilitates true health care reform.

Not only does third-party payment attenuate the incentive to compare costs and value, but the notion that someone else is paying for the insurance further reduces the incentive for cost control. Getting Americans invested in cost control will require that they realize they pay the price, not just for the deductibles and co-payments, but for the full insurance premiums too.

Sustainable increases in wages require less explosive growth in health care costs. Only then will increases in productivity show up in higher wages and lower prices, giving a boost to real incomes. Similarly, the only way for states to provide more support for education, environment, and infrastructure is for health care costs to be restrained. Unless the growth in Medicaid and SCHIP are limited to—or close to—revenue increases, they will continue to siphon money that could be spent elsewhere.

CONCLUSION

Discussions of health care financing in the United States are distorted by the widely embraced myth of shared responsibility. The common claim that employers, government, and households all pay for health care is false. Employers do not share fiscal responsibility and employers do not pay for health care—they pass it on in the form of lower wages or higher prices. It is essential for Americans to understand that while it looks like they can have a free lunch—having someone else pay for their health insurance—they cannot. The money comes from their own pockets. Understanding this is essential for any sustainable health care reform.

ADDITIONAL STATEMENTS

CONGRATULATING MRS. HOLLY COLLINSWORTH

• Mr. BUNNING. Madam President, I wish to congratulate Mrs. Holly Collinsworth of Ft. Thomas, KY, for being named one of the Cincinnati Enquirer's Women of the Year for her dedication and service to our community. This outstanding award is given annually to 10 women in the northern

Kentucky and Greater Cincinnati area for their hard work and commitment to making our communities a better place to live.

Mrs. Collinsworth, mother of four children, has begun a task never before imagined to help improve Fort Thomas schools. She is currently leading a fundraising campaign that has collected millions of dollars in private money to help renovate the 71-year-old Highlands High School, her alma mater. The school has not been refurbished since the 1960s. With her leadership, over \$7.4 million in private donations, State matching funds and grants has been raised to help with the repairs.

Mrs. Collinsworth's contributions to the Commonwealth do not stop there. She and husband Cris Collinsworth, former Cincinnati Bengal and current NFL broadcaster, are among the founders of UGive, a nonprofit that matches area students fulfilling their school community service requirements with charities in need of volunteers. The UGive program was started this year and will be up and running by August.

Mrs. Collinsworth also serves on the board of the Cris Collinsworth ProScan Fund and cochairs its Pink Ribbon Luncheons which have raised more than \$1 million for programs such as breast cancer education and mammograms for low-income uninsured women.

I thank Mrs. Collinsworth for her dedication and commitment to the community. She has made a tremendous impact on individuals across northern Kentucky and the Greater Cincinnati area. I appreciate all that she has done and will continue to do in the future. Mrs. Collinsworth is truly an inspiration to all Kentuckians.●

RECOGNIZING THE TOWN OF HEBRON

• Mr. DODD. Madam President, today I wish to recognize a significant milestone for one of the towns in my home State of Connecticut. This year, the town of Hebron is celebrating the 300th anniversary of its founding.

As recently as 1930, Hebron's population stood at only 879 people. Today, with an estimated population of 8,600 persons, Hebron continues to exemplify Connecticut's rich heritage. Throughout its history, it has been able to retain its small-town, rural charm that existed when it was first founded on May 26, 1708.

With its wide-open fields, mixture of colonial and contemporary architecture, and the annual Harvest Fair, Hebron provides an idyllic New England setting. Gay City State Park, the town's most widely known attraction, offers a glimpse into Connecticut's industrial roots with the opportunity to explore the ruins of an extinct mill town that existed until the time of the Civil War.

The residents of Hebron are rightfully proud of the town's rich cultural

and agricultural heritage and have scheduled a year's worth of activities to celebrate this momentous occasion. I ask my colleagues to join with me in congratulating my many friends among the good people of Hebron as they gather this year to celebrate their town's three centuries of history.●

TRIBUTE TO BARBARA J. EASTERLING

• Mr. LAUTENBERG. Madam President, I pay tribute to Barbara J. Easterling for her tireless dedication to workers' rights. Barbara is a true leader, and her commitment to the Communication Workers of America, CWA, is more than worthy of recognition.

Barbara is the first woman ever to serve as CWA's secretary-treasurer—its second-highest office—and she has held the position for the past 16 years. She supervises the budget, finances, and strategic planning of the organization, and is responsible for the union's retiree program. The 700,000 men and women of the CWA have consistently reelected Barbara by acclamation, most recently in 2005.

In addition, Barbara has worked to advance the rights of women in the workplace. She serves on the board of the Union Network International, UNI, a 17-million member labor organization, and is president of the UNI World Women's Committee. For her accomplishments, Barbara has received the Women's Equity Action League Award, the International Women's Democracy Center Global Democracy Award, the Midwest Labor Press Association's Eugene V. Debs Award, and the Ellis Island American Legend Award.

While Barbara has displayed impressive achievements as secretary-treasurer of CWA, she has also found time to contribute to several other worthy organizations. She is cochair of the National Alliance to End Homelessness, a member of the Spinal Bifida Foundation and the Elizabeth Glaser Pediatric AIDS Foundation, and serves on the board of directors of the National Democratic Institute for International Affairs and the Faith and Politics Institute. Barbara has displayed a commendable ability to advance the goals of each of these organizations and increase their impact.

Throughout her long and distinguished career, Barbara has worked to shatter the glass ceiling at the local, national, and international level. I am proud that she was honored last month before a record gathering of union women at the Women in Leadership Development Conference in East Brunswick, NJ. Whether striving to advance the rights of workers, serving as an advocate for women, or volunteering her time on behalf of countless organizations, Barbara has been a strong and effective leader. Barbara embodies the best of the union spirit and I thank her for her service and commitment to the CWA and workers across the country.●